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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 August 1999, at 10 a.m.

Chairman: Mr. HATANO

later: Mr. RAMISHVILI
(Vice-Chairman)

later: Mr. HATANO
(Chairman)

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The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (continued) (E/CN.4/Sub.2/1999/21 and 37; E/CN.4/Sub.2/1999/NGO/2, 6, 11 and 18)

1. Mr. EIDE, completing the statement he had been making at the end of the previous meeting, said that it was very important to recognize that minorities had the right of self-identification. For example, if a group was of Turkish origin it must be entitled to consider itself of Turkish origin, and by the same token, the Kurdish population of Turkey was entitled to consider itself a Kurdish minority.

2. Turning to the question of religious minorities, he said that human rights issues arose when a religion or its adherents created problems for the adherents of another religion, when the dominant religion was supported by the public authorities of the State concerned, or when the public authorities did not take adequate measures to protect a vulnerable religious minority. If a State's policy was secularist and, in an attempt to be impartial with respect to different religions, it disallowed all religious manifestations, a human rights problem arose; at the same time, it had to be recognized that religious groups must show tolerance and avoid activities contrary to human rights.

3. A number of representatives of non-governmental organizations (NGOs) had said that States should be encouraged to recognize the pluralism of their societies and to find ways and means of respecting the identities of groups. A positive example of that endeavour was the process of devolution being implemented in Sri Lanka, which would give minorities the opportunity to be more effectively involved in decision-making.

4. One NGO had referred to the long-standing problem of "orchestrated disturbances" by members of an ethnic majority against a minority. It was a fundamental principle that police and law-enforcement agencies had to be impartial with respect to the different groups in society and to ensure equal protection to all groups both large and small. Where majority groups were orchestrating violence against a minority, a State had to be particularly active to ensure the protection of that minority. If it did not do so, the minority would inevitably take its protection into its own hands, the result being an armed conflict.

5. Mr. OLOKA-ONYANGO said he had been troubled by the fact that people who belonged to States that were established entities were so afraid of minority groups seeking to exercise the "right" to secession. He failed to comprehend why there was such an addiction to the idea of territorial integrity, the sanctity of State borders and the inviolability of sovereign equality. It was distinctly surprising that article 8, paragraph 4, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities appeared to cause no discomfort, and had been so ably defended by Mr. Eide in his response to Mr. Khalifa. In that connection, he wondered whether the problems of civil conflict, negative ethnic confrontation and even the annihilation of entire populations had been the result of challenging that principle or of seeking to uphold it.

6. He joined Ms. Motoc in calling for the Working Group not only seriously to consider the right to self-determination but also to examine comprehensively the question of a "right" to secession. The example Mr. Eide had given of the minority that had turned into a majority had been a telling instruction in the benefits of pursuing the approach of accommodation but, unfortunately, so many of the cases currently encountered involved intransigence, retrenchment, further exclusion and, ultimately, rebellion. It was essential to examine the contemporary state of the State.

7. There were two realities. The conceptual reality was that enshrined in article 8, paragraph 4, of the Declaration, while the practical reality was that the very concept of territorial integrity was under threat, compelling a more critical examination of the question of secession. It was unfortunate that the international community had begun by sticking to the conceptual reality rather than the reverse. That addiction to the concept emerged from the somewhat fatalistic view which considered that secessionists had no greater horizons than the dominant perceptions of the State from which they sought to separate. The urge for autonomy, pushed to the point of confrontation, was often fostered by deliberate marginalization, and was heightened and became irredentist when demands by groups for power-sharing led to large-scale reprisals and atrocities against them, thereby driving them to insurrection.

8. In conclusion, he wished to ask the Working Group to consider whether conceptual recognition of the right to secession might not encourage multicultural States to rectify pre-emptively any abuses of minorities. Furthermore, if an international mechanism were established through which groups that might develop separatist tendencies could find effective recourse, that would surely assist in arriving at a peaceful solution to many of the world's conflicts. The possibility of even pursuing those options could become firm, however, only if there was a readiness to move away from the attitude of treating some of the tenets of international law as sacred cows.

9. Mr. JOINET said he welcomed the fact that there had been some further discussion of the "right" to secession. Such discussion was fraught with risks, and it was important not to be too rigid in one's initial approach to it. Nevertheless, consideration must be given to what the right to self-determination would comprehend in the future.

10. Mr. HOANG HUU HAI (Observer for Viet Nam), speaking in exercise of the right of reply, said he wished to respond to the brazen and unfounded allegations contained in statements by the observers for France Libertés - Fondation Danielle Mitterand and another non-governmental organization regarding religious minorities in Viet Nam. There were certain people who were attempting to deliver distorted information which was in clear contrast to the reality of freedom of religious practice by the Vietnamese people and the efforts by his Government to ensure an ever-growing right to freedom of religion and belief. It was the consistent policy of his Government to promote and protect all religious practices, particularly those of religious minorities.

11. Mr. MERIC (Observer for Turkey), speaking in exercise of the right of reply, said that the observer for Greece had stated that there was no Turkish minority as such in Greece and had requested that the relevant section of the report of the Working Group on Minorities (E/CN.4/Sub.2/1999/21) be amended to refer to the "Muslim minority" since the community consisted not only of Turks but of other Muslims as well. His own delegation did not share that opinion and, in that connection, wished to draw the Sub-Commission's attention to the recent statement by the Minister for Foreign Affairs of Greece attesting to the presence of a Turkish minority in Greece, a statement which had been received by the Turkish nation with acclamation. He would have expected the observer for Greece to have followed the words of his Minister.

12. Ms. VANAVESKI (Observer for Estonia), speaking in exercise of the right of reply, said she had been surprised by the statement by the observer for the Russian Federation that had referred to illegal immigrants as minorities. She had been even more surprised by the views expressed regarding the so-called Morozov case since, in a recent statement, the spokesman for the Ministry for Foreign Affairs of the Russian Federation had clearly stated that Mr. Morozov, like any other person in Estonia, must respect the laws of the country of residence.

13. The Estonian Parliament had adopted a law on expulsion and denial of re-entry as part of normal legislation in the field of immigration, and it regulated the expulsion of and denial of re-entry to aliens who had illegally entered or were illegally staying in Estonia. No specific ethnic minority group was targeted by the law, and similar laws were in force in other countries. The figure of 70,000 mentioned by the observer for the Russian Federation did not reflect any reality, and the use of the word "deportation" in that context was deeply offensive.

14. Mr. DOUVOS (Observer for Greece), speaking in exercise of the right of reply, said that there had been a misunderstanding. He had referred to the provisions of the Treaty of Lausanne, signed in 1923 by Greece and Turkey, and the observer for Turkey had not correctly understood the statement by the Minister for Foreign Affairs of Greece.

15. Ms. DAES, speaking on a point of order, said that she wished to advise the observer for Turkey not to take the floor and exercise a right of reply when Turkey had not been mentioned. The observer for Greece had referred to the report of the Working Group on Minorities in order to provide certain clarifications, including a clarification as to the way in which a minority in Greece, a minority which respected and loved that country, should be described according to a specific treaty that had been signed. Turkey had not been mentioned, and she considered the statement made in exercise of the right of reply by the observer for Turkey to be quite inappropriate and thus null and void.

16. Mr. MERIC (Observer for Turkey), speaking in exercise of the right of reply, said that his delegation did not share the view expressed by the member of the Sub-Commission. It was quite natural for Turkey to be interested in its national minorities, and his statement in exercise of the right of reply was pertinent to the current discussion.

ORGANIZATION OF WORK (agenda item 1) (continued)

(c) METHODS OF WORK OF THE SUB-COMMISSION (continued) (E/CN.4/Sub.2/1999/2 and 3; E/CN.4/1999/104, 120 and 124)

17. The CHAIRMAN said that the sessional working group on methods of work of the Sub-Commission had held three meetings and had adopted its report, distributed to members in an unedited version in English only. Its annex contained a document entitled "Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto" which was a revised version of the working paper he had himself submitted (E/CN.4/Sub.2/1999/2).

18. Mr. BOSSUYT, Chairman-Rapporteur of the sessional working group on the methods of work of the Sub-Commission, introducing its report, drew attention to the footnote to the annex containing the guidelines which stated that any reference to rules meant the rules of procedure of the functional commissions of the Economic and Social Council. References to decisions and practices relating to those rules of procedure were reproduced in small print and sources, if any, were indicated in square brackets. Guidelines referred to in the text would be found in the annex to resolution 1992/8 adopted by the Sub-Commission on 26 August 1992. Supplements to the Guidelines were contained in document E/CN.4/Sub.2/1994/3 as approved by the Sub-Commission in its decision 1994/117.

19. He took it that the Sub-Commission would wish to transmit the annexed guidelines to the Commission on Human Rights, for its information, and to request the High Commissioner for Human Rights to disseminate them in printed form, so that they would be readily accessible to all participants in the Sub-Commission's sessions.

20. The CHAIRMAN said that all members had received photocopies of the paper - available in English only - which Mr. Eide had prepared and then revised, following the deliberations in closed session, on the future tasks of the Sub-Commission, its working methods, the length of its sessions, its composition and the means of appointing its members. Members had also received a revised working paper produced by the Working Group on Communications concerning some aspects of the functioning of the 1503 procedure. The two papers would together constitute the Sub-Commission's contribution to the work of the Commission's inter-sessional working group on enhancing the effectiveness of its mechanisms.

21. Mr. EIDE, introducing his paper on the future tasks of the Sub-Commission, its working methods, the length of its sessions, and the composition and appointment of its membership, said that the background to the discussion had been the Sub-Commission's new name, which implied that its mandate had been modified. In its discussions, the Sub-Commission had taken into account the recommendations made by the Bureau of the fifty-fourth session of the Commission on Human Rights (E/CN.4/1999/104), the debate held by the Commission, the observations made a group of "like-minded" States

(E/CN.4/1999/120) and the observations contained in the letter from the Republic of Korea on behalf of the Asian Group (E/CN.4/1999/124).

22. All the members of the Sub-Commission were agreed that its primary function was to be a think-tank and that, consequently, it had to address the major issues on the human rights agenda at the beginning of the coming century, including the administration of justice, the establishment of a social forum, examination of the impact of globalization, the prevention of discrimination and the promotion and protection of the rights of minorities and peoples, including indigenous people, and the prevention of discrimination against migrants and other non-citizens.

23. In the context of addressing those issues, the Sub-Commission had discussed its functions and methods of work, emphasizing the need for improving cooperation with other human rights bodies and ameliorating its study programme. As for country work, a few members were in favour of the proposal by the Commission's Bureau that, instead of country-specific resolutions, the outcome of the Sub-Commission's annual debate on human rights violations should be a summary. One member preferred that the annual debate should be abolished but felt that, if it were retained, country-specific resolutions were preferable to the adoption of a summary. On balance, the majority suggested that the Sub-Commission should continue to apply its expertise to country situations not pending in the Commission by adopting country-specific or thematic resolutions, decisions or Chairman's statements, but that it should use such authority with restraint and seek dialogue and cooperation with Governments, giving preference to the prevention of human rights violations, and ensuring objectivity in the choice of situations addressed.

24. The Sub-Commission assumed that the recommendation of the Bureau of the Commission on the avoidance of resolutions related only to the agenda item on violations in any country and was not intended to recommend the abolition of resolutions and decisions under other agenda items. As for the 1503 procedure, the Sub-Commission was of the opinion that it should be maintained in its current four-stage form, but that there was room for improvement, agreeing with the view put forward by the Working Group on Communications.

25. The Sub-Commission endorsed the Commission Bureau's recommendation that the inter-sessional Working Group on Minorities should continue to function and that the Working Group on Indigenous Populations should continue until such time as a permanent forum for indigenous people was established within the United Nations system. The Sub-Commission did not, however, endorse the proposal that the Working Group on Contemporary Forms of Slavery should be terminated, since that would eliminate a useful forum for NGOs committed to the prevention or abolition of contemporary human rights violations of considerable significance and seriousness.

26. The members of the Sub-Commission unanimously held that it would be impossible to complete the substantial tasks involved in its mandate unless it met for four weeks. They also unanimously held that the number of its members should not be reduced below 26, a number which was required to maintain diversity and expertise and to ensure the participation of different cultures,

traditions and subregions. The Sub-Commission unanimously agreed that its members should not be nominated but elected, which was a more democratic approach. There was no consensus as to whether or not there should be a restriction on the number of terms a member could serve, but there was a consensus that, if restrictions were to be applied, eight years would be too short a period. The Sub-Commission took the view that it was not up to it to adopt a position on the Bureau's proposal that its members should not be concurrently employed in the executive branch of their Governments. Lastly, it unanimously took the view that the system of alternates should be maintained; a system that cost the United Nations nothing and had a number of benefits, including increasing the number of specialists who became closely connected with and informed of the human rights work of the United Nations.

27. The CHAIRMAN recalled that, at a previous meeting, a member had asked the Secretariat for details of the basis of comparison which had led the Commission on Human Rights to state the Sub-Commission was more expensive than it was itself.

28. Mr. COMBA (Chief, Administrative Section, Office of the High Commissioner for Human Rights) said that the budgets for both the Commission and the Sub-Commission included a conference servicing section which did not form part of the budget of the Office of the High Commissioner for Human Rights (OHCHR). In the case of the Commission, the rule was that the Secretariat would meet the cost of one round-trip ticket per delegation. Not all delegations requested reimbursement, but some US$ 200,000 was set aside for the purpose per biennium. More specifically, for the 1998-1999 biennium US$ 204,600 had been allotted; of that, approximately US$ 110,000 covered travel costs and US$ 90,000 covered general temporary assistance and overtime by the Secretariat. Expenditure on the travel of representatives in the 1998-1999 biennium had so far amounted to US$ 120,000.

29. The Sub-Commission was more expensive than the Commission in terms of the OHCHR budget because, in addition to the travel costs of its members, the Secretariat also met the cost of their daily subsistence allowance (DSA). For the 1998-1999 biennium, US$ 660,000 had been allotted for travel and DSA and, so far, US$ 650,000 had been spent.

30. The cost of conference servicing for the two bodies was the responsibility of the Conference Services Division, but he was able to provide estimated costs for the current biennium. For the Commission, the estimated cost of conference servicing was US$ 11.4 million. For the Sub-Commission, the figure was US$ 3.8 million.

31. When preparing the proposed programme budget for the 2000-2001 biennium, the Secretariat had - purely as an exercise - costed the potential savings that would result from reducing the membership of the Sub-Commission from 26 to 15 and shortening the session from four weeks to two weeks. The result had been a saving of approximately US$ 350,000 for the biennium.

32. Mr. YIMER, having thanked the Chief of the Administrative Section, said that he still could not see on precisely what basis the conclusion had been reached that the Sub-Commission was more expensive for the United Nations than the Commission. Any such comparison must be based on total costs, and include

such items as the Commission's working groups and subsidiary bodies. He failed to see why the costs of some of the Commission's activities had been left out of the account.

33. Mr. PINHEIRO, agreeing with Mr. Yimer, said that a fairer basis of comparison would surely be between the costs of the Sub-Commission and those of other expert bodies.

34. Mrs. WARZAZI said that she supported the suggestion of a comparison with other expert bodies but thought that, in order to simplify the calculation and give the comparison a sharper focus, it would be sufficient to compare the Sub-Commission's costs with those of the International Law Commission and the Committee on the Rights of the Child. She suggested that the figures should be presented in the form of a consolidated table showing the costs of the three bodies.

35. Mr. EIDE said that the figures quoted by the Chief of the Administrative Section showed that travel and subsistence costs were small in comparison with those of conference servicing. The reduction of the membership from 26 to 15 and of the duration of the session from four to two weeks would, accordingly, not achieve a major reduction in total costs.

36. Mr. ALFONSO MARTÍNEZ said that, in his view, the Sub-Commission must seek some means of presenting the true situation regarding its costs in rebuttal of the Commission's claim that it was excessively expensive. What was needed was some kind of document for the Commission's consideration at its next session, which would present the situation in its true light. One specific matter on which he would welcome clarification concerned the travel costs of the members of the Commission. The figure that he had himself arrived at on the basis of reimbursement for one member of each of the 53 delegations was more than double that quoted by the Chief of the Administrative Section.

37. Mr. COMBA (Chief, Administrative Section, Office of the High Commissioner for Human Rights) said that the Commission Bureau's assertion that the Sub-Commission was more expensive than the Commission itself was based on the section relating to human rights activities of the United Nations budget, which indicated a considerable difference between the expenses of the two bodies, due to the fact that the experts of the Sub-Commission received a subsistence allowance.

38. He would endeavour to obtain the figures for the requested comparison between the Sub-Commission, the International Law Commission, and the Committee on the Rights of the Child.

38. Mr. Alfonso Martínez was quite right in calculating that, if the entitlement to reimbursement for delegation costs were exercised by all the members of the Commission, its costs would be very much increased. In practice, however, a number of countries did not exercise their entitlement, thereby making it possible for a further part of the total human rights budget to be devoted to other human rights activities. If all delegations exercised their entitlement, there would have to be a corresponding cutback in those activities.

39. Mr. ALFONSO MARTÍNEZ said that he failed to understand why, if the entitlement were exercised, the costs should be borne by cutbacks in human rights activities. Surely the difference should be met by an increased allocation of funds.

40. Mr. COMBA (Chief, Administrative Section, Office of the High Commissioner for Human Rights) said that that possibility was excluded by the way in which the budget was prepared. A ceiling on each section, in the case in question that of human rights, was approved by the General Assembly and could not be exceeded. The figure agreed on was based on the assumption that all delegations would seek remuneration, but, since that had been found not in fact to be the case, the practice had developed of using the resources thus made available for other human rights activities, which would, consequently, inevitably be cut back if the pattern changed and all delegations sought reimbursement.

41. Mr. SORABJEE said that, even if the duration of the session were reduced, travel costs would remain the same, and the only difference would be in DSA and conference servicing. He wondered how those figures would break down.

42. Mr. COMBA (Chief, Administrative Section, Office of the High Commissioner for Human Rights) said that there would be a corresponding reduction in conference servicing costs, which were based on working days, and there would, of course, be a substantial reduction in the costs of subsistence allowances, which probably amounted to considerably more than travel costs. He would endeavour to produce some estimates of the relevant figures by the following day.

43. The CHAIRMAN thanked the Chief of the Administrative Section for the information he had provided, and hoped that he would be able to provide the additional figures requested in the near future.

44. Mr. BOSSUYT* said that Mr. Eide was to be congratulated on his paper, which admirably summarized the conclusions reached by the Sub-Commission in its closed meetings.

45. The Sub-Commission was the only United Nations human rights expert body to which all the Member States could contribute by proposing a national human rights expert for membership. It was also the only human rights expert body which could address human rights situations in any country of the world without restriction. Furthermore, it had available to it a wide variety of working instruments: discussion, consideration of complaints from both individuals and NGOs; the establishment of inter-sessional working groups, such as those on slavery, indigenous populations, and minorities, and sessional working groups, such as those on the administration of justice, on transnational corporations, and on its own methods of work; the adoption of reports, studies, working documents, resolutions and decisions, etc.

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* This statement has been given full coverage in the summary record in accordance with the decision taken by the Sub-Commission during the meeting.

46. More than any other United Nations body, it had always shown great openness to NGOs which were the main source of information for the entire mechanism of human rights protection under the Charter. When, however, their participation in its work had threatened to become too invasive, the Sub-Commission had taken the necessary measures to safeguard its own functioning while avoiding a direct confrontation with them.

47. Its studies had a special value because they were subject to the criticism of the various participants in its work drawn from extremely diverse legal, geographical, ideological and cultural backgrounds. Their value depended largely on the responses of Governments to questionnaires drawn up by the Sub-Commission's special rapporteurs. While, in the past, the choice of subject had occasionally left something to be desired, the Sub-Commission had adopted rules that ensured a more judicious choice. In particular, it had come a long way since the time when each study was actually drafted by a team of secretariat officials, and the special rapporteur simply confined himself to assuming responsibility for the work carried out in his name. What still remained unchanged, however, was that the special rapporteurs were not paid for their work.

48. Over the past 10 years or so, the Sub-Commission had constantly reviewed its methods of work in order to achieve more effective organization. Thus, it had succeeded some years previously in restructuring its agenda more logically to improve the organization of its work. Everyone familiar with the Commission's work would know how difficult that task could be. It was hoped that those endeavours to improve the Sub-Commission's methods of work would culminate in the adoption at the end of the current session of guidelines consolidated by the sessional working group on the basis of the Chairman's working document. Those guidelines would also clarify the rules of procedure applicable to the Sub-Commission.

49. Furthermore, thanks to the Chairman's efforts, no one could complain that the Sub-Commission had been wasting the available conference time by beginning meetings late or allowing some participants to exceed their allotted speaking times. He did not think that there had ever been meetings of a United Nations body in which punctuality had been more strictly respected. Although the Sub-Commission had frequently been reproached for duplicating the Commission's work, it had adopted a draft decision in 1996 prohibiting the adoption of resolutions on human rights situations that were the subject of a special procedure relating to a specific country.

50. Against that background, no one would be surprised by the Sub-Commission's failure to comprehend the draconian measures that the Bureau of the Commission's fifty-fourth session sought to impose upon it unilaterally. One of the grounds on which the Bureau had based its recommendations was utterly without foundation; namely, that the Sub-Commission was by far the most costly subsidiary mechanism of the Commission, the cost of its annual session being greater than that of the session of the Commission itself. If such statements were made, it was essential that what was compared should be comparable. The United Nations assumed responsibility for the travel and subsistence costs of all the members of the Sub-Commission, whereas the expenses of the Commission delegations, some of which exceeded in number the entire membership of the Sub-Commission,

were borne directly by the States members of the Commission. As for the number of meetings (the most expensive item), the Sub-Commission was limited to 30 public meetings while the Commission was authorized to hold 90, i.e. three times as many.

51. Moreover, the Commission invited some 50 prominent people (almost double the total membership of the Sub-Commission) to participate, at United Nations expense, in its annual session, whereas there was only one person in the same situation at the Sub-Commission's current session. The documentation for the Commission's session, another costly item, was many times greater than that for the Sub-Commission's session.

52. It would be more appropriate to compare the Sub-Commission with other expert bodies, such as the International Law Commission, which had a larger membership and a longer session than the Sub-Commission, or the Human Rights Committee, which had three annual sessions, as compared with the Sub-Commission's one session. Moreover, its experts, unlike those of the Sub-Commission, received fees. The High Commissioner for Human Rights should, accordingly, be invited to provide the Commission's working group with full and precise figures to enable relevant comparisons to be made.

53. In those circumstances, no one should be surprised that the Sub-Commission had, in its closed meetings as expressly requested by the Commission, rejected three of the Bureau's most disastrous recommendations: reduction of the number of its members from 26 to 15, to the detriment of experts from countries not major regional Powers, and accordingly of geographical diversity, which was one of the Sub-Commission's major assets; the replacement of the election of Sub-Commission members, which was a democratic and transparent procedure, by nomination by the Chair of the Commission, who might be subjected to all sorts of underhand pressures; and the reduction of the length of sessions from four to two weeks, which would preclude serious discussions either among the members, or with the NGOs and government observers particularly concerned.

54. The Sub-Commission was also unanimously opposed to the limitation of terms of membership to, at the most, one single renewal, considering that such a rule would be too strict and not conducive to the more efficient functioning of the Sub-Commission. It would also be discriminatory, since it was not applied to any other expert or intergovernmental United Nations body. Furthermore, the absence of members with the most extensive experience of the complex machinery of United Nations human rights bodies was not likely to enhance the Sub-Commission's expertise. To his own knowledge, the initiatives most severely criticized by the Commission had not necessarily been taken by the most experienced experts.

55. Everyone with any experience of the Commission and the Sub-Commission knew that there had always been tensions between the two bodies operating in the same field which were differentiated essentially by their membership. When the Sub-Commission did the same thing as the Commission it was accused of "duplication", and when it innovated and showed imagination it was accused of "politicization". It was probably better to recognize that each body had its own responsibilities, which it discharged as well as it could; that each of them, in its own way, was trying to encourage Governments to carry out more

effectively the obligations they had assumed on becoming parties to the United Nations Charter and to respect human rights and fundamental freedoms and that each body was operating in an extremely political environment that could readily arouse distrust and render any action suspect, even if it aimed at the most praiseworthy objectives. Neither of the two bodies was perfect, far from it, which was why accusations from one side or the other, and even confrontations, were fruitless. Experience had shown that, in the long run, they were a waste of time and energy that would be better devoted to the defence of human rights throughout the world.

56. He was convinced that the Sub-Commission must continue its efforts, and redouble them, in order constantly to improve its methods of work. Dialogue with the Commission could help that process, but he very much doubted whether unilateral actions were calculated to further the process of progressive reform of the Sub-Commission by adapting it gradually to international changes in the field of human rights. It was, moreover, the Governments that tirelessly repeated, when the Sub-Commission addressed human rights violations in particular countries, that it must avoid confrontation and foster dialogue and cooperation, which alone were capable of building the confidence necessary to achieve success. For his part, he thought that the same applied to the relations between the Commission and the Sub-Commission.

57. Mr. Ramishvili, Vice-Chairman, took the Chair.

58. Mr. FAN Guoxiang expressed support for the structure of Mr. Eide's revised paper. He fully endorsed the reference to the Sub-Commission's "primary function as a think tank" in paragraph 3. The five major issues listed at the end of that paragraph should not be viewed as exhaustive. It was appropriate that "Country work" had been included in the section entitled "Functions and methods of work" rather than in that entitled "Substantive tasks". The "thematic resolutions" referred to in paragraph 6 seemed to be country-specific resolutions in another guise. He would wait and see whether his reservations regarding such resolutions were borne out by developments during the voting scheduled for the following day.

59. Mr. Hatano resumed the Chair.

60. Ms. JANJUA (Observer for Pakistan), speaking on behalf of the member States of the Organization of the Islamic Conference (OIC), extended sincere condolences to the observer for Turkey on the heavy loss of life and destruction of property wrought by the earthquake that had struck two days previously. The OIC member States expressed their solidarity with the people of Turkey in their hour of difficulty.

61. The wide-ranging discussions that took place among the members of the Sub-Commission, who represented diverse cultures, civilizations and at times extremely divergent views, could not be replicated elsewhere. The Sub-Commission should focus its energies on the substantive task of generating fresh thinking and new initiatives in the area of human rights.

62. The Sub-Commission's confidential work under Economic and Social Council resolution 1503 (XLVIII) was based on a rigorous procedure of complaints and responses by Governments. Any consideration of a country situation in an open

procedure must be based on fully authenticated information and equally rigorous criteria. Country resolutions and country-naming in thematic resolutions duplicated other thematic procedures and the work of the Commission on Human Rights. Such resolutions were also selective and not necessarily based on human rights criteria, as evidenced by the hesitation to name some countries where gross, systematic and well-documented violations continued to occur. OIC member States were concerned that they were more likely than others to be mentioned in such resolutions.

63. Intense interaction between the experts of the Sub-Commission and NGOs occurred in connection with the drafting of resolutions. Equally intense interaction with Governments was essential to ensure that resolutions were balanced and based on objective facts. Thus attempts had been made by some NGOs at recent sessions of the Sub-Commission to misrepresent and misinterpret Islam. Extremist elements existed in all religions and societies but only Islam tended to be identified with terrorism, intolerance and human rights violations. Concerned by the rise of Islamophobia, the OIC countries had taken the lead in having resolution 1999/82 entitled "Defamation of religions" adopted by the Commission at its fifty-fifth session. The Sub-Commission should also take action against the trend towards the negative stereotyping of Muslims.

64. Some government-organized or government-sponsored NGOs continued to offer their banner in the Commission and the Sub-Commission to individuals, organizations and Governments for the purpose of targeting particular countries. Instead of working for the promotion and protection of human rights, they were being used as the foreign policy tools of the Governments concerned.

65. Mr. NUSHIMAN (Observer for Malaysia), speaking also on behalf of Algeria, Bhutan, China, Cuba, Egypt, India, Indonesia, Islamic Republic of Iran, Mexico, Myanmar, Pakistan, Philippines, Sri Lanka and Sudan, the "like-minded countries", said that the Sub-Commission had provided valuable inputs for the work of the Commission on Human Rights, especially in "cutting-edge" fields. To close the lid on future areas of study would be, to say the least, ill-advised. The Sub-Commission had a useful role to play, for example, in developing current thinking on economic, social and cultural rights and in promoting a dialogue among civilizations regarding human rights. Vanquishing poverty and promoting development must be given top priority not only for their own sake but also for the advancement of human rights. Such issues must remain at the centre of the reform process, which was to be welcomed and should be continued.

66. The countries he represented were against such drastic measures as abolishing the Sub-Commission, reducing its members or severely curtailing its role. The existing membership should be maintained to ensure adequate representation of cultural and religious diversity, and the existing democratic method of selecting membership should be retained. Any attempt to shorten the Sub-Commission's sessions should be based on its programme of work rather than on arbitrary guidelines.

67. On the other hand, the countries he represented were in favour of abolishing the practice of adopting country-specific resolutions because they

tended to politicize the work of the Sub-Commission, detracting from its think-tank role, and duplicated the work of the Commission. They therefore regretted the emergence of "thematic/country" resolutions, which were essentially thematic resolutions embodying lists of countries. It was an approach that duplicated the work of the Commission's special rapporteurs. For example, the situations mentioned in Sub-Commission resolution 1998/3 on violations of the rights of human rights defenders in all countries could have been more usefully addressed by the special rapporteurs dealing with torture, summary executions, arbitrary detention and freedom of opinion and expression. Moreover, the practice of adopting resolutions before the Governments concerned had been give the opportunity to make an adequate response amounted to a presumption of guilt.

68. The effectiveness of bodies such as the Sub-Commission did not stem from their capacity to coerce or pressurize countries through monitoring and finger-pointing but from their capacity to engender confidence and cooperation through approaches that eschewed politicization and selectivity and sought instead to identify solutions and facilitate the enjoyment of human rights, particularly through national capacity-building. Any reform must take into account the indivisibility and interdependence of human rights and wasteful duplication of effort in the United Nations system must be avoided.

69. Mr. PINHEIRO, supported by Mr. JOINET, proposed that Mr. Bossuyt's statement be appended to the final version of Mr. Eide's paper. He further proposed incorporating in the paper a muted response, perhaps in the form of a consolidated table as proposed by Mrs. Warzazi, to the budgetary information that had been provided by Mr. Comba.

70. Mr. LEBAKINE (Secretary of the Sub-Commission) said that the rules on the control and limitation of documentation prohibited the reproduction of a text twice in one session of a United Nations body. Mr. Bossuyt's statement could be given full coverage in the summary record of the current meeting and a reference to the record (E/CN.4/Sub.2/1999/SR.22) could be inserted, if the Sub-Commission so desired, in Mr. Eide's paper.

71. It was so decided.

72. Ms. HAMPSON said she was concerned about the tone and content of the Sub-Commission's response to the proposals by the Bureau of the Commission. It was important not to appear to be whining, negative and defensive. The argument for retaining the Sub-Commission was not its relative cost but that its work was important and unique and that it was performed effectively. She welcomed Mr. Eide's paper, which dealt first with substantive tasks and then with functions and methods of work, important issues that needed to be addressed before dealing with specific procedural and related points. The Chairman's final working paper (E/CN.4/Sub.2/1999/2) attested to the Sub-Commission's ability to operate effectively and expeditiously.

73. Responding to Mr. Fan Guoxiang's comment on thematic resolutions, she said that such resolutions were not solely of the kind to be voted on under agenda item 2. It was unclear whether the proposal by the Bureau of the Commission was directed against country-specific resolutions only or against

all resolutions. To avoid ambiguity, it was important to retain the existing wording of paragraph 6 of Mr. Eide's paper, which referred to both country-specific and thematic resolutions.

74. Mr. FAN Guoxiang said that he had no objection whatsoever to purely thematic resolutions concerning, for example, affirmative action and the rights of non-citizens. He had strong reservations, on the other hand, about thematic resolutions in which individual countries were named.

75. Mr. JOINET said that, ideally speaking, Ms. Hampson was right to stress that the relative cost of the Sub-Commission was not the key issue. Nevertheless, the United Nations reform strategy, driven by the failure of certain Member States to pay their contributions, was based on downsizing anything that was perceived to be unduly costly. For practical purposes, therefore, the financial argument must be taken into account.

76. Ms. HAMPSON said she had no objection to inserting a refutation of the Bureau's argument so long as it did not give the impression that the sole justification for the Sub-Commission's existence was that it was cheaper than other bodies.

77. The CHAIRMAN said he took it that the Sub-Commission wished to adopt Mr. Eide's revised paper and the revised working paper of the Working Group on Communications.

78. It was so decided.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(agenda item 9) (E/CN.4/Sub.2/1999/24, 31 and 36; E/CN.4/Sub.2/1999/NGO/3 and 23; E/CN.4/Sub.2/1998/19; E/CN.4/Sub.2/1999/WG.1/CRP.1)

79. The CHAIRMAN said that, pursuant to Sub-Commission decision 1998/110, several members of the sessional working group on the administration of justice had been requested to prepare working papers. As no working group on that topic had been established at the current session, he thought that the Sub-Commission would be fully justified in considering any such working papers in plenary session.

80. Mr. FIX ZAMUDIO said that his interim report on the improvement and efficiency of judicial instruments for the protection of human rights at the national level and their impact at the international level (E/CN.4/Sub.2/1999/WG.1/CRP.1) sought to provide a systematic and comprehensive analysis of judicial and procedural instruments for the protection of human rights in the domestic sphere. The second part of the study would consider the effectiveness of such instruments, in particular the ease with which they could be invoked by individuals. In that connection, reference would be made to the legal counselling facilities that had been established in various countries in recent years. The last part of the study would consider the international impact of national instruments, inter alia in the light of the rule that domestic remedies must be exhausted and the growing trend towards the incorporation of international human rights law in domestic legislation.

81. The Sub-Commission had studied domestic instruments on a number of occasions, formulating useful principles with a view to enhancing their effectiveness. Mr. Chernichenko and Mr. Treat, for example, had produced a study entitled "The right to a fair trial: Current recognition and measures necessary for its strengthening" (E/CN.4/Sub.2/1994/24), which contained a useful analysis of habeas corpus, the right of amparo and the basic principles of due process of law.

82. Other important contributions were Mr. Joinet's study of the question of the impunity of perpetrators of violations of human rights (civil and political rights) (E/CN.4/Sub.2/1996/18) and Mr. van Boven's study of the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8).

83. He had assigned national legal instruments to three separate categories. The first consisted of indirect instruments, which had been drafted to resolve disputes regarding the application of ordinary legislation but had subsequently been invoked for the purpose of enforcing constitutionally or internationally recognized human rights. The second category was supplementary instruments, which could be used to remedy the consequences of human rights violations, and the third and most important category was that of specific instruments for the protection of human rights, characterized by simple and brief proceedings, effective protective measures and solutions generally involving damages or restitution.

84. Latin America had been particularly creative in devising new instruments for the protection of human rights, for example the collective writ of mandamus (mandado de segurança colectivo), the writ of injunction (mandado de injunção) and habeas data in Brazil and people's legal actions (acciones populares) for the protection of the "diffuse" or transpersonal interests (in effect, rights) of dispersed or unorganized social groups.

85. Mr. JOINET said that the approach adopted by Mr. Fix Zamudio in his interim report reflected the shift of emphasis from standard-setting to implementation advocated by the High Commissioner for Human Rights in her opening statement. While States were obliged to respect standards, judges had the harder task of applying them. In the countries of the former Soviet Union, for example, the question arose how judges were to interpret

legal provisions inherited from the old regime in the light of recent constitutional reforms. Consideration should be given to amending the title of the proposed working group so that it would reflect the Sub-Commission's concern with the implementation of standards, inter alia, in the field of justice.

86. Mr. GUISSÉ said, with regard to his annual report on the evolution of capital punishment, that he would analyse alternative, socially beneficial penalties, itemize the methods of execution commonly employed, many of which flagrantly violated minimum standards and constituted inhuman and degrading treatment; and list the States that had most often had recourse to the death penalty in the past year.

87. According to Amnesty International, little progress had been made towards abolition in the period under review. In 1999, Spain and the United Kingdom had signed Protocol No. 6 to the European Convention on Human Rights Concerning the Abolition of the Death Penalty. The trend towards abolition in Europe generally had not brought a concomitant rise in crime. Throughout the world, there were 54 countries that had abolished the death penalty completely, 15 had retained it in the case of war crimes only, and 27 countries had not applied it for more than 10 years. There were 97 countries that still retained the death penalty. Ten states of the United States of America had resumed executions since 1990. Most of the persons executed in the United States of America were blacks. In the Democratic Republic of the Congo, more than 60 persons had been publicly executed since the installation of the new regime.

88. States should be urged to commute death sentences imposed on minors, pregnant women, the elderly and disabled people. The Sub-Commission, NGOs and States should contribute to the debate on alternative penalties, as a means of encouraging more States to abolish the death penalty.

89. Mr. MONOD (War Resisters International) said that many countries still refused to accord conscientious objectors the possibility of performing alternative civilian service, instead regarding them as deserters liable to up to 10 years' imprisonment in peacetime and the death penalty in time of war. In 1999, the Austrian Parliament had exonerated Austrian soldiers who had refused to join the German Army in 1940. In May 1998, the German Parliament had similarly exonerated German deserters. Soldiers who had chosen to desert from the Yugoslav Army rather than to participate in ethnic cleansing were to be admired. Those who refused to take up arms as a result of their country's decision to resort to military force deserved to be treated as human beings.

90. In the Democratic People's Republic of Korea, deserters were executed. In Iraq, their hands or ears were cut off. In Algeria, a General had executed not only a deserter himself but also his family, as an example to others. In Angola and the Democratic Republic of the Congo, children aged 14 and above who sought to escape forcible conscription were executed. Nineteen Angolans who had fled to Portugal to escape conscription had been returned to the Angolan police by the Portuguese authorities and their lives were currently in the balance.

91. The Governments concerned must urge their military authorities to put an end to such flagrant violations of human rights. His organization called upon the Sub-Commission to consider the plight of the hundreds of thousands of conscientious objectors and deserters throughout the world who wished to see war abolished. Ultimately, the task was not to legitimize conscientious objection, but to delegitimize the use of arms and abolish armies.

92. Mr. SOTTAS (World Organization against Torture) said that, on 7 July 1999, the Peruvian Congress had voted to withdraw its recognition of the jurisdiction of the Inter-American Court of Human Rights, thereby denying its citizens their constitutional entitlement to seek international redress for violations of their rights once domestic remedies had been exhausted. His organization expressed its acute concern at that decision.

93. Since December 1994, thousands of persons had been arrested in Bahrain under the 1974 State Security Act, which permitted administrative detention without charge or trial for up to three years. Only a few hundred of those arrested had been brought to trial, in circumstances that raised concern for their right to due process. A glaring example was that of Sheikh 'Abd al-Amir al-Jamri, who had been sentenced to 10 years' imprisonment and a US$ 15 million fine, more than three years after his arrest on charges of espionage.

94. His organization also drew attention to the fate of hundreds of victims of enforced disappearance in Western Sahara and southern Morocco. Some who had survived the experience were currently demanding justice and compensation in accordance with article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

95. It also drew the attention of the Sub-Commission to the fate of 50 persons who had been awaiting trial for six years in the Mysore Central Prison in Karnataka, India, having been arrested under the 1987 Terrorist and Disruptive Activities (Prevention) Act, some provisions of which conflicted with India's international obligations.

96. Fundamental rights could not be protected without the effective application of national legislation. A strong and independent judiciary was necessary for that purpose, and his organization thus supported Mr. Joinet's proposal.

97. Ms. LEVERGER (France Libertés - Fondation Danielle Mitterrand) said that the recent massive protests in the Islamic Republic of Iran, the largest in the regime's history, had once again been bloodily suppressed, with an estimated 10,000 or more persons arrested across the country. Family members were congregating outside the prisons and detention centres, awaiting news of their relatives' fate. Concerned that those arrested, many of them minors, might be subjected to torture, her organization urged the Sub-Commission to call upon the Iranian authorities to allow an international fact-finding mission to visit the country and investigate the situation.

98. The Sub-Commission should also ensure that Kurds held in Turkish prisons on suspicion of terrorism were accorded a fair trial.

99. Mr. WOLDE-MARIAM (International Movement for Fraternal Union Among Races and Peoples) said that, after nearly eight years, the Ethiopian regime had finally decided to register the Ethiopian Human Rights Council in accordance with the law. The Council's bank account had also been unblocked. Those developments, albeit belated, were nonetheless welcome.

100. Ethiopia had an excellent set of civil, criminal and commercial laws. The total collapse of its judicial system was thus attributable, not to a dearth of laws, but to the incompetence of judges and prosecutors and the lack of independence of the judicial system as a whole. As a result, the human rights situation in Ethiopia remained shameful. Extrajudicial killings, torture and illegal detention continued with impunity. It was common practice to fabricate charges against respectable individuals whose views differed from those of the regime, and to torture so-called witnesses into giving false evidence. An extreme example was that of Professor Asrat Weledeyes, an eminent surgeon dismissed from his university post and imprisoned for more than five years on a concocted charge. He and several other eminent persons had died or fallen seriously ill while serving sentences for fabricated crimes or while awaiting trial. The Sub-Commission should appoint a special rapporteur to investigate the administration of justice in Ethiopia.

101. Ms. ASSAD (International PEN) said that her organization's Writers in Prison Committee wished to draw attention to the growing practice of using custodial and non-custodial punishment as a means of silencing critics of the Government in Turkey. PEN was currently monitoring the cases of 103 writers and journalists who were in prison or undergoing protracted judicial process because of their writings. Turkey's laws, particularly its anti-terrorist legislation, enabled people to be detained for long periods or charged merely for expressing their views. The author of a book examining three incidents in which innocent civilians had met their deaths had recently been sentenced to 12 months' imprisonment and a fine of 100 million Turkish lira for "spreading propaganda questioning the indivisible integrity of the Turkish State". A blind lawyer and writer who had defended political prisoners was serving a 16-year prison term for attempting to "change the constitutional order by force" and "disseminating separatist propaganda".

102. On 8 January 1996, a 27-year-old journalist had been beaten to death while in police custody. Those responsible would spend about 18 months in prison, allowance having been made for remission and pre-trial detention. It was ironical that those found guilty of the deliberate killing of a defenceless human being in their custody should receive a shorter sentence than that handed down to a blind lawyer guilty only of expressing his views. Such was the situation of human rights in Turkey.

The meeting rose at 1.05 p.m.